

APR 27 2007

Application No. 10/659,063  
Filed: September 10, 2003  
TC Art Unit: 1623  
Confirmation No.: 3827

REMARKS

The Applicants submit these additional remarks further to the entry of the Amendment dated October 12, 2006, and the remarks therein.

The Applicants' argument concerning the Lund patent can be summarized as follows:

"The Applicants' argument can be summarized as follows:

- [0032], cited by the Examiner, includes a list of modulators, "such as agonists and antagonists," of CD38 enzyme activity and/or cADPR dependent responses that can be used in the Lund method and a list of treatable disorders. This second list includes both conditions where inflammation needs to be treated (as in the method of the instant invention) and conditions where inflammation needs to be induced (such as infections).
- As [0032] is not specific as to which modulator is suggested for which condition, it must be interpreted in conjunction with [0013].
- [0013], first half of the paragraph, states that CD38 antagonists may be used in the treatment of inflammation among other disorders.
- [0013], in the second half of the paragraph, states that agonists of CD38 should be used when the subjects are "infected with pathogenic microorganisms," i.e., a condition in which inflammatory agents are recruited and inflammation is induced to fight the infection.

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- In Applicants' method, however, agonists are taught as useful for fighting inflammation and not as useful for inducing it.
- Thus, Lund et al. teaches the exact opposite treatment as in the Applicants' claimed method. Applicants submit that Lund et al. is a clear teaching away situation and that one of ordinary skill would never have been led to the Applicants' invention through any of the Lund et al. teachings.
- While not being bound by any theory, it is believed that these results are so different because the Applicants have based their claims on sound observation and direct testing of the effects of CADPR on inflammation itself, not on a removed effect. In contrast, Lund et al. created a totally artificial environment in their animal model by working with CD38KO mice, an environment that, from their results, clearly should not be extrapolated to clinical conditions."

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The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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